

6101.12

similar means of avoiding unnecessary proof;

(3) Plans, schedules, and rulings to facilitate discovery;

(4) Limiting the number of witnesses and other means of avoiding cumulative evidence;

(5) Stipulations or agreements disposing of matters in dispute; or

(6) Ways to expedite disposition of the case or to facilitate settlement of the dispute, including, if the parties and the Board agree, the use of alternative dispute resolution techniques, as provided in 6101.51 and 6101.54 (Rules 51 and 54).

(b) *Conference memorandum.* The Board may issue a memorandum of the results of a conference, an order reflecting any actions taken, or both. A memorandum or order so issued shall be placed in the record of the case and sent to each party. Each party shall have 5 working days after receipt of a memorandum to object to the substance of it.

6101.12 Suspensions and dismissals [Rule 12].

(a) *Suspension of proceedings to obtain contracting officer's decision.* The Board may in its discretion suspend proceedings to permit a contracting officer to issue a decision when an appeal has been taken from the contracting officer's alleged failure to render a timely decision.

(b) *Suspension for other cause.* The Board may suspend proceedings in a case for good cause, such as to permit the parties to finalize a settlement. The order suspending proceedings will prescribe the duration of the suspension or the conditions on which it will expire. The order may also prescribe actions to be taken by the parties during the period of suspension or following its expiration.

(c) *Dismissal, generally.* A case may be dismissed by the Board on motion of either party. A case may also be dismissed for reasons cited by the Board in a show cause order to which a response has been permitted. Every dismissal shall be with prejudice to reinstatement of the case except as specified in paragraph (d) of this section.

(d) *Dismissal without prejudice.* When circumstances beyond the control of

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the Board prevent the continuation of proceedings in a case, the Board may, in lieu of issuing an order suspending proceedings, dismiss the case without prejudice to reinstatement within 180 calendar days after the date of the dismissal. When a case has been dismissed without prejudice and neither party has timely requested that the case be reinstated, the case shall be deemed to be dismissed with prejudice on the last day such a request could have been made.

(e) *Issuance of order.* The presiding judge alone may issue an order suspending proceedings. An order of dismissal shall be issued by the panel of judges to which the case has been assigned if the motion is contested or if the Board is acting consequent to its own show cause order. An order of dismissal may be issued by the presiding judge alone if the motion to dismiss is not contested.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26951, May 12, 2008]

6101.13 General provisions governing discovery [Rule 13].

(a) *Discovery methods.* The parties are encouraged to exchange documents and other information voluntarily. In addition, the parties may obtain discovery by one or more of the following methods:

(1) Depositions upon oral examination or written questions;

(2) Written interrogatories;

(3) Requests for production of documents, electronically stored information, or other tangible or intangible things; and

(4) Requests for admission.

(b) *Scope of discovery.* Except as otherwise limited by order of the Board, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending case, whether it relates to the claim or defense of a party, including the existence, description, nature, custody, condition, and location of any books, documents, electronically stored information, or other tangible or intangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that

the information sought will be inadmissible if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Discovery limits.* The Board may limit the frequency or extent of use of the discovery methods set forth in 6101.13 (Rule 13) if it determines that:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity by discovery in the case to obtain the information sought; or

(3) The discovery is unduly burdensome and expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake.

(d) *Conduct of discovery.* Parties may engage in discovery only to the extent the Board enters an order which either incorporates an agreed plan and schedule acceptable to the Board or otherwise permits such discovery as the moving party can demonstrate is required for the expeditious, fair, and reasonable resolution of the case.

(e) *Discovery conference.* Upon request of a party or on its own initiative, the Board may at any time hold an informal meeting or telephone conference with the parties to identify the issues for discovery purposes; establish a plan and schedule for discovery; set limitations on discovery, if any; and determine such other matters as are necessary for the proper management of discovery. The Board may include in the conference such other matters as it deems appropriate in accordance with 6101.11 (Rule 11).

(f) *Discovery objections.* (1) In connection with any discovery procedure, the Board, on motion or on its own initiative, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including, but not limited to, one or more of the following:

(i) That the discovery not be had;

(ii) That the discovery be had only on specified terms and conditions, including a designation of the time and place,

or that the scope of discovery be limited to certain matters;

(iii) That the discovery be conducted with no one present except persons designated by the Board; and

(iv) That confidential information not be disclosed or that it be disclosed only in a designated way.

(2) Unless otherwise ordered by the Board, any objection to a discovery request must be filed within 15 calendar days after receipt. A party shall fully respond to any discovery request to which it does not file a timely objection. The parties are required to make a good faith effort to resolve objections to discovery requests informally.

(3) A party receiving an objection to a discovery request, or a party which believes that another party's response to a discovery request is incomplete or entirely absent, may file a motion to compel a response, but such a motion must include a representation that the moving party has tried in good faith, prior to filing the motion, to resolve the matter informally. The motion to compel shall include a copy of each discovery request at issue and the response, if any.

(g) *Failure to make or cooperate in discovery.* If a party fails to appear for a deposition, after being served with a proper notice; to serve answers or objections to interrogatories submitted under 6101.14 [Rule 14], after proper service of interrogatories; or to serve a written response to a request for inspection, production, and copying of any documents, electronically stored information, and things under 6101.14 [Rule 14], the party seeking discovery may move the Board to impose appropriate sanctions under 6101.33 [Rule 33].

(h) *Subpoenas.* A party may request the issuance of a subpoena in aid of discovery under the provisions of 6101.16 (Rule 16).

[72 FR 36795, July 5, 2007, as amended at 73 FR 26951, May 12, 2008]

6101.14 Interrogatories to parties; requests for admission; requests for production [Rule 14].

Upon order from the Board permitting such discovery, a party may serve on another party written interrogatories, requests for admission, and requests for production.